

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

United States of America :
 :
 v. : File No. 2:95-CR-72
 : File No. 2:02-CR-23
 Stephen Brent Hutchins :

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Papers 832 and 841)¹

Defendant Stephen Brent Hutchins, proceeding *pro se*, has filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. (Paper 832). In his motion, filed on September 21, 2005, Hutchins claims that the Court impermissibly delegated authority to the Bureau of Prisons to obtain fine payments. Hutchins also argues that the Court should re-sentence him and impose a schedule of payments.

On November 4, 2005, Hutchins moved to withdraw his § 2255 motion, claiming that he has "learned of additional grounds upon which to base his motion for sentence modification and has also discovered the form with which to submit a proper 2255 motion." (Paper 841). Upon receiving Hutchins' motion to withdraw, the Court issued an order warning Hutchins of the possible

¹ In case number 2:02-CR-23, the corresponding filings are Papers 80 and 88, respectively.

consequences of withdrawing his § 2255 motion. (Paper 843). Specifically, the Court sought to ensure that Hutchins was aware of both the one-year limitations period and the restrictions on second or successive motions set forth in § 2255. The Court also required Hutchins to confirm that, after reviewing the Court's order, he still wished to withdraw his § 2255 motion.

Hutchins has now responded to the Court's order, stating that "I do wish to proceed with my motion to withdraw and that I do fully recognize the potential consequences of doing so, as outlined in your order." In light of Hutchins' latest filing, I recommend that the Court GRANT his motion to withdraw his § 2255 motion (Paper 841), and that the § 2255 motion (Paper 832) be DISMISSED without prejudice.

Dated at Burlington, in the District of Vermont,
this 28th day of November, 2005.

/s/ Jerome J. Niedermeier
Jerome J. Niedermeier
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all

parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).